

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NUSTAR PIPELINE COMPANY, LLC f/k/a
KANEB PIPELINE COMPANY, LLC, and
NUSTAR TERMINALS SERVICES, INC. f/k/a
SUPPORT TERMINAL SERVICES, INC.,

Plaintiff,

v.

INSURANCE COMPANY OF NORTH
AMERICA, UNITED STATES FIDELITY AND
GUARANTY COMPANY, and ILLINOIS
UNION INSURANCE COMPANY,

Defendants.

Case No.: 3:12-cv-05336

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(B)
(DIVERSITY)

CLERK'S ACTION REQUIRED

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT IN AND FOR THE
WESTERN DISTRICT OF WASHINGTON

Please take notice that defendant Illinois Union Insurance Company ("IUIC") hereby
removes to this Court the state court action described below under 28 U.S.C. § 1441(b) on the
basis of diversity jurisdiction:

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §
1441(B) (DIVERSITY) - 1

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LAW OFFICES OF
COZEN O'CONNOR
A PROFESSIONAL CORPORATION
1201 THIRD AVENUE
SUITE 5200
SEATTLE, WASHINGTON 98101-3071
(206) 340-1000

A. This Is A Notice Of Removal Based On Diversity Of Citizenship For An Action Pending In The Superior Court Of Washington, In And For Clark County

IUIC is a named defendant in a civil action filed in the Superior Court of Washington, in and for Clark County, styled *NuStar Pipeline Company, LLC et al v. Insurance Company of North America et al*, case number 12-2-01118-8 (the “state court action”).

B. The State Court Action Was Commenced On March 23, 2012, And All Defendants Were Simultaneously Served On March 28, 2012

The state court action was commenced on March 23, 2012, when that action was filed with the Clerk of the Superior Court for Clark County. A copy of that complaint is attached as Exhibit A to the Declaration of Brendan Winslow-Nason. In addition to the complaint, a complete copy of all documents filed in the state court proceeding as of the date of this notice of removal are submitted at Exhibit A to the Declaration of Brendan Winslow-Nason, pursuant to Local Rule (“LR”) 101(b).

All of the defendants were served via statutory service of process on the Washington State Insurance Commissioner (the “Insurance Commissioner”). The Insurance Commissioner received a copy of the state court action on March 27, 2012, and simultaneously served all of the defendants on March 28, 2012. A copy of an e-mail from the Insurance Commissioner’s office confirming the dates of service is attached as Exhibit B to the Declaration of Brendan Winslow-Nason.

C. The State Court Action Concerns An Amount In Controversy In Excess Of \$75,000, And Involves Plaintiffs And Defendants Of Diverse Citizenship

The state court action is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by defendant IUIC pursuant to 28 U.S.C. § 1441(b) in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

1 *1. IUIC Has A Good Faith Basis To Believe That The Plaintiff Is Seeking*
 2 *Damages Of At Least \$11.4 Million*

3 Notwithstanding the fact that the prayer in the plaintiffs' complaint does not specify the
 4 dollar amount of the damages being sought, IUIC nevertheless has a good faith basis to believe
 5 that the amount in controversy is well in excess of \$75,000. *See* LR 101(a). Attached to this
 6 notice of removal is the Declaration of Christine L. Haus. She is a claims professional for
 7 IUIC. As described in Ms. Haus's declaration, prior to bringing the state court action, the
 8 plaintiffs tendered the environmental claim that is the subject of the state court action. The
 9 plaintiff represented to Ms. Haus that their claim was worth \$11.4 million, which is well in
 10 excess of the jurisdictional amount of \$75,000.

11 *2. The Plaintiffs Are Citizens Of Texas, Delaware, And South Dakota, Whereas*
 12 *The Defendants Are Citizens Of Connecticut, Illinois, And Pennsylvania*

13 As set forth at Exhibits C and D to the Declaration of Brendan Winslow-Nason, the
 14 plaintiffs in the state court action are NuStar Pipeline Company, LLC, f/k/a Kaneb Pipeline
 15 Company, LLC ("NPC") and NuStar Terminals Services, Inc. f/k/a Support Terminal Services,
 16 Inc. ("NTS"). Plaintiff NTS is and was incorporated in Delaware in 1992, and maintains its
 17 principal place of business in San Antonio, Texas. NPC is and was formed in Delaware in
 18 1971 as a limited liability company, and maintains its principal place of business in Yankton,
 19 South Dakota. NPC's sole stakeholder is NuStar Energy, LP ("NE"). NE is and was
 20 incorporated in Delaware in 2001, and maintains its principal place of business in San Antonio,
 21 Texas.

22 As set forth at Exhibits E through G to the Declaration of Brendan Winslow-Nason, the
 23 defendants to the state court action are the Insurance Company of North America ("INA"),
 24 United States Fidelity and Guaranty Company ("USF&G"), and IUIC. INA is and was
 25 incorporated in Pennsylvania in 1794, and maintains its principal place of business in
 26 Philadelphia, Pennsylvania. USF&G is and was incorporated in Connecticut in 2009, and
 maintains its principal place of business in Hartford, Connecticut. IUIC is and was

1 incorporated in Illinois in 2005, and maintains its principal place of business in Philadelphia,
2 Pennsylvania.

3 **D. All Of The Defendants – IUIC, INA, And USF&G – Have Consented To This**
4 **Removal**

5 As discussed at paragraph 9 and documented at Exhibit H to the Declaration of
6 Brendan Winslow-Nason, IUIC has contacted counsel for both INA and USF&G and has
7 secured consent from the defendants to remove the state court action to federal court.

8 **E. This Notice Of Removal Is Timely Filed With This Court, And IUIC Has Timely**
9 **Notified The State Court Of This Removal**

10 This Notice of Removal is timely, in that it is being filed within thirty (30) days of
11 receipt of service of the state court action on the defendants who were simultaneously served
12 on March 28, 2012.¹ Pursuant to 28 U.S.C. § 1446(d), IUIC is also concurrently and timely
13 filing a copy of this Notice of Removal in the state court action.

14 DATED this 18th day of April, 2012.

15 COZEN O'CONNOR

16 By: /s/ Brendan Winslow-Nason.
17 Thomas M. Jones, WSBA #13141
18 Brendan Winslow-Nason, WSBA #39328
19 Attorneys for Defendant Illinois Union Insurance
20 Company
21
22
23

24 ¹ IUIC notes that the state court action may not be clearly removable on its face because (1) the state court action
25 does not plead the citizenship of NPC's LLC members, and (2) the state court action does not plead the amount in
26 controversy. Thus, the 30 day deadline for filing this removal may not have yet commenced. Nonetheless, in
abundance of caution, IUIC is submitting this removal notice within 30 days of service of the state court action
and has established that there is diversity jurisdiction by way of the attached affidavits of Brendan Winslow-
Nason and Christine L. Haus.

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2012, I electronically filed the foregoing document with the Clerk of the Federal Court using their CM/ECF system.

I further certify, under penalty of perjury of the laws of the State of Washington, that the foregoing document was served upon the interested parties in the manner indicated below:

**Plaintiffs NuStar Pipeline Company, LLC
and NuStar Terminals Services, Inc.**

Stephen J. Tan, WSBA #22756
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**Defendant Insurance Company of North
America**

R. Lind Stapley, WSBA #19512
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DECLARATION OF BRENDAN WINSLOW-NASON IN
SUPPORT OF REMOVAL - 5

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**Defendant United States Fidelity and
Guaranty Company**

**T. Arlen Rumsey, WSBA #19048
GORDON POLSCER**

1000 Second Avenue, Suite 1500
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☐ U.S. Mail
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☐ Federal Express
☒ ABC Legal Messenger

DATED this April 18, 2012

COZEN O'CONNOR

By: /s/ Diane M. Finafrock
Diane M. Finafrock, Legal Assistant to
Brendan Winslow-Nason

DECLARATION OF BRENDAN WINSLOW-NASON IN
SUPPORT OF REMOVAL - 6

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